IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

(1) Shyam Sharma & anr. Vs. Kailash Chandra & ors.

S.B.CIVIL MISC. APPEAL NO.353/1992

(2) Chhoga Lal Vs. Prem Chand & anr.

S.B.CIVIL MISC. APPEAL NO.193/1992

Against the common award dated 29.01.1992 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case Nos.280/1989 and 264/1989.

Date of Judgment: 06.09.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Dilip Kawadia for the appellants in CMA No.353/1992.
Mr.Pawan Ojha for the appellant in CMA No.193/1992
Mr.Jagdish Vyas for the respondent-insurer

BY THE COURT:

These two appeals, CMA No.353/1992 and CMA No.193/1992, preferred by the claimants seeking enhancement over the amount of compensation awarded by the Motor Accidents Claims Tribunal, Udaipur in their respective claim cases in its common award dated 29.01.1992

relate to the same accident and have been heard together and hence are taken up for disposal by this common judgment.

Brief facts relevant for determination of the questions involved in these appeals are that at about 6.00 p.m. on 26.02.1989 at Sukhadia Circle, Udaipur a bus, bearing registration No.CPU 5034 belonging to the respondent Prem Chand driven by Kailash Chandra (impleaded respondent No.1 only in CMA No.353/1992) and insured with the respondent the National Insurance Company Ltd., hit several persons on the road and foot-path resulting in death of Asgar Ali, Dinesh Mohan Sharma, Bhanwarlal Jain and so also the pedestrian Smt. Shail Sharma (wife of appellant No.1 and mother of appellant No.2 in CMA No.353/1992); and in causing several bodily injuries to Saifuddin, Shyam Sharma (appellant No.1 in CMA No.353/1992), Abhinav Sharma (appellant No.2 in CMA No.353/1992) and so also to the scooterist Chhogalal (appellant in CMA No.193/1992).

Separate Claim Applications were submitted by the injured and by the legal representatives of the deceased aforesaid claiming compensation for the loss suffered by them as a result of the accident.

In Claim Case No.280/1989 (pertaining to CMA No.353/1992) the claimants claimed compensation for the accidental death of 27 years old Smt. Shail Sharma, wife of

claimant No.1 and mother of claimant No.2, with the submissions that the victim was having qualification of Post Graduation in Economics and Hindi Literature and Graduation in Education; that she was working with Saraswati Niketan Madhyamik Vidyalaya earning salary income of Rs.1,119/- per month; and that she was likely to get appointment as lecturer and her salary would have been about Rs.4,000/- per month. It was also pointed out that the claimant No.2, son of the victim, was an infant of about nine months when he lost his mother. The claimants in all made a claim for compensation in the sum of Rs.6,20,000/-.

The other claimant Chhogalal in Claim Case No.264/1989 (pertaining to CMA No.193/1992) submitted that he was riding his scooter bearing registration No. RNY 5331 when was hit by the said bus and the accident caused several bodily injuries to him including fractures on his legs and so also caused damage to his scooter; that he could not carry out the work of his travel agency for eight months and stating various losses claimed compensation in the sum of Rs.3,25,000/-.

The Tribunal disposed of the aforesaid along with six other claim cases after consolidated trial by its impugned common award dated 29.01.1992. The Tribunal found that the accident occurred for rash and negligent driving of the bus

driver and held the insurer of the bus liable to satisfy the respective awards. It is not in dispute that the insurer did challenge that part of the award by which liability was mulcted upon it and such challenge by the insurer has failed before this Court and so also before the Hon'ble Supreme Court. Therefore, the findings regarding responsibility towards accident of the bus driver and so also of the liability of the insurer to satisfy the award have become final; and only the quantum of compensation remains in question in these appeals preferred by the claimants in relation to their respective claim cases. Noteworthy it is that the non-applicants before the Tribunal led no evidence.

Taking up quantification of compensation in Claim Case No.280/1989 learned Judge of the Tribunal noticed the contentions of the parties and the evidence led by the claimant and then observed with reference to the document Ex.319 that the deceased Smt. Shail Sharma was working as a teacher and was contributing financially to the family; and that her husband 30 years in age and the son 9 months in age have lost her company and her love and affection and thereafter abruptly concluded that if an award in the sum of Rs.1,50,000/- be made, the same would meet the ends of justice and rejected other claim being based on probabilities and being excessive. Learned Judge observed thus:

> "सभी परिस्थितियों को ध्यान में रखते हुवे मैं यह उचित समझता हूं कि यदि 1,50,000/-(एक लाख पच्चास हजार रूपये) क्षतिपूर्ति की राशि दिलाई जाय तो न्याय का हित पूरा हो सकेगा। शेष राशि महज संभावनाओं पर व अत्याधिक होने से निरस्त की जाती है।"

In relation to Claim Case No.264/1989 (pertaining to CMA No.193/1992), the learned Judge again referred to the evidence produced by the claimant including the bills relating to treatment expenditure and his income-tax assessment Ex.293 for the year 1975-1976 with reference to the claim for loss of income and so also his injury report Ex.291 and X-Ray report Ex.292 showing one grievous injury; and then referred to his age at 50 years and again abruptly concluded that the ends of justice would be served, if compensation in the sum of Rs.50,000/- be awarded. The learned Judge observed thus:

> "मैंने समस्त तथ्यों पर विचार किया। चोट प्रतिवेदन के अनुसार केवल एक चोट गंभीर किस्म की है ओर उससे किसी भी प्रकार की स्थाई अयोग्यता नहीं पाई जाती है। प्रार्थी के द्वारा जो 9000/-माहवार आय आय होना कहा है वह भी आय कर प्रमाण पत्र से समर्थित नहीं है और अन्य प्रकार से भी समर्थित नहीं है। उसकी उम्र 50 वर्ष बयान में अंकित हुई है ऐसी अवस्था में प्रार्थी की आय, चोट की किस्म, आर्थिक स्थिति मानसिक व शारीरिक वेदना, इलाज व खुराक पर हुवे खर्च आदि सभी पर विचार करने के उपरान्त यह न्यायोचित पाता हूँ कि यदि 50,000/-की राशि क्षतिपूर्ति की दिलाई जाय तो न्याय का हित पूरा हो सकेगा।"

The awards in both the cases have been assailed being too low and grossly inadequate. Learned counsel appearing

for the insurer has supported the impugned award and submitted that the ultimate amount awarded by the Tribunal in each case remains that of just compensation and cannot be said to be grossly inadequate so as to warrant interference by the appellate court.

Having heard learned counsel for the parties and having perused the impugned award and so also the material placed on record, this Court is clearly of opinion that the impugned award on its quantification of compensation in relation to these two claim cases cannot be approved being inadequate; and deserves suitable modification.

Having perused the impugned award dated 29.01.1992 in its totality, this Court is constrained to observe that the approach of the learned Judge of the Tribunal in making the award in every case by granting compensation in a lump sum cannot be appreciated. It is noticed that eight claim cases have been decided by the impugned award dated 29.01.1992 and not only for the claim cases pertaining to the present appeals, but in relation to each of the claim case, learned Judge has proceeded to make some reference to the evidence and then, in every case, made similar kind of observations as quoted hereinabove that a particular lump sum would meet the ends of justice. This Court is of opinion that while granting compensation in a vehicular accident case,

it is ordinarily expected of the Tribunal to award compensation on some rationale, some basis and some principles; and to specify the basis for arriving at a figure of just compensation. May be in a given case, lump sum award could be held justified having regard to the overall circumstances of the case but it cannot be adopted as a short cut in every case that award be made only in lump sum. The cursory approach of the learned Judge in the present cases has obviously resulted in serious injustice particularly in relation to Claim Case No.280/1989 for compensation on account of accidental death of well qualified working woman in 27 years of age who left behind her husband and her infant son. Even the award in relation to the injured in Claim Case No.264/1989 falls short of just compensation.

In Claim case No.280/1989, the deceased Smt. Shail Sharma was admittedly 27 years of age and had the qualifications of double M.A. and B.Ed.; and her existing income itself was of Rs.1,119/- per month as established by the certificate Ex.319 that has been accepted correct by the learned Judge. It has also been pointed out that she remained hospitalised for about two days and expired on 28.02.1989. She left behind 30 years old husband and nine months old infant. Awarding of compensation in this case ought to have

been considered by the Tribunal on relevant principles instead of adopting the short cut of making the award in lump sum.

It has been urged during the course of submissions that the claimant husband has stated that the deceased was working as teacher only as her pastime and in view of such statement it cannot be believed that there has been a loss of contribution resulting in pecuniary loss. A comprehension of statement of AW-6 Shyam Sharma makes it clear that such statement was only related to the fact that the deceased, with her qualifications of double M.A. and B.Ed., had already applied for a job of lecturer and while waiting for such job she had joined Saraswati Niketan as teacher so as to earn Rs.1,119/- per month. The claimant stated that she was handing over entire salary to him only. It is obvious from the evidence available on record that the victim had the potential to earn better and in any case even at the time of her death, she was contributing to her family by earning Rs.1,119/- per month. Even if the case is considered from a conservative stand point and only the last known salary income of the deceased at Rs.1,119/- per month is taken into consideration; and in view of the overall family set up where the husband himself was earning substantially, the contribution by the deceased be adopted only at 50% of her earnings, a minimum contribution in the sum of Rs.560/- per month was

available to the claimants from the deceased at the time of her death. In view of qualification of the deceased and her young age of 27 years, even if a smaller component is provided for better future likely earnings; and for the purpose of her average earning, only an appreciation 1.5 times is provided to the last known income, then too a possibility of her average income at Rs.1,678.50 cannot be ruled out and even while taking her contribution only at 50%, average monthly contribution at Rs.839.25 remains the minimum loss that is required to be considered for the claimants particularly when the claimants include her infant too. On the basis of aforesaid calculation, multiplicand of Rs.10,071/- (839.25 x 12) could reasonably be adopted and in view of the age of the victim and the age of claimants, the multiplier of 18 deserves to be applied that leads to a pecuniary loss figure of Rs.1,81,278/-, rounded up to Rs.1,81,300/-.

The deceased remained hospitalised for about two days before breathing her last and in view of extensive injuries sustained by her as discernible from post-mortem report Ex.318, a reasonable component of expenditure on treatment in the sum of Rs.3,000/- deserves to be allowed.

The claimant husband lost the company of his wife at the young age of 30 years and he deserves to be allowed a sum of Rs.10,000/- towards loss of consortium. The other

claimant, Abhinav Sharma lost his mother in his infancy and in the peculiar circumstances of the case the said claimant deserves to be allowed non-pecuniary loss for love and affection of his mother at Rs.15,000/-. Further amount in the sum of Rs.2,000/- deserves to be allowed towards funeral expenses.

Therefore, the claimants are entitled for compensation in the sum of Rs.2,11,300/- (1,81,300/- + 3,000/- + 25,000/- + 2,000/-) even on a conservative estimate and the Tribunal has been entirely unjustified in restricting the award only in the sum of Rs.1,50,000/-. The award thus deserves to be modified by upward revision.

So far other Claim Case No.193/1992 is concerned, the Tribunal has proceeded to make an award in lump sum of Rs.50,000/- with the observations as noticed above. The Tribunal has made an observation that it was the choice of the claimant to take private treatment at Ahmedabad though reasonable treatment was available at Udaipur itself. Such observation again falls short of reasonable approach to a vehicular accident case and sound unrealistic. In view of the extensive injuries sustained, including communited fracture of upper half of right femur shaft, the claimant cannot be faulted for such choice of better treatment

at Ahmedabad nor he could be deprived of just compensation only because he did not take treatment at Udaipur.

Admittedly, the claimant had suffered one grievous injury and four simple injuries and a sum of Rs.10,000/- deserves to be allowed towards such injuries. The claimant has produced on record extensive bills of treatment expenditure and having regard to the circumstances of the case and his long drawn hospitalisation and treatment, it appears appropriate to allow a sum of Rs.15,000/- towards treatment expenditure. The claimant has been certified by his treating doctor to have got 2 ½'' shortening of right lower limb and his permanent partial disablement has been stated at 48% particularly in view of angularity and malunification of the bones. Though such percentage of disablement appears to be exaggerated and having regard to the circumstances of the case, such disability cannot be taken more than 20% of the affected limb but nevertheless the claimant is entitled for reasonable compensation therefor. The claimant is stated to be engaged in Travel Agency business and though as such loss in future earning capacity is not allowed on account of such disablement, yet in view of the ultimate result of injuries, the claimant deserves to be allowed a sum of Rs.25,000/- towards loss of amenities in life. Another sum of Rs.5,000/- deserves to be allowed on attendants during the long drawn

period of treatment and immobilisation of the claimant. Yet another sum of Rs.5,000/- deserves to be allowed for the expenditure on special diets. The claimant has remained under treatment for eight months and though no future loss of income is being allowed, yet the claimant deserves to be allowed a reasonable amount of Rs.5,000/- towards loss of income suffered by him during the period of his treatment. The claimant is, therefore, entitled for compensation in the sum of Rs. 65,000/- (10,000/-+15,000/- + 25,000/- + 5,000/- + 5,000/- + 5,000/-) as against the amount of Rs.50,000/- awarded by the Tribunal.

The Tribunal has of course allowed interest at the rate of 12% per annum to the claimants, however, having regard to the facts and circumstances of the cases, it is considered appropriate to allow interest on the enhanced amount of compensation only at the rate of 6% per annum from the date of filing of the respective claim applications.

As a result of the aforesaid, these appeals succeed and are partly allowed thus:

(I) In CMA No.353/1992 the claimants are allowed compensation in the sum of Rs.2,11,300/- in place of Rs.1,50,000/- as awarded by the Tribunal. The claimants shall, therefore, be entitled for further amount of Rs.61,300/-

and on this enhanced amount shall be entitled to interest at the rate of 6% per annum from the date of filing of claim application. 75% of the amount payable under the modified award shall be deposited in a Monthly Income Scheme of Post Office for a minimum of six years in the name of claimant No.2 who shall be entitled to receive periodical interest thereupon. The remaining amount may be paid cash to the claimant No.1.

(II) In CMA No.193/1992 the claimant is allowed compensation in the sum of Rs.65,000/- in place of Rs.50,000/- as awarded by the Tribunal. The claimant shall, therefore, be entitled for further amount of Rs.15,000/- and on this enhanced amount shall be entitled to interest at the rate of 6% per annum from the date of filing of claim application. The amount so payable to this claimant may be paid cash.

(III) The respondent insurer shall deposit the amount payable under the modified award within 30 days from today with the Tribunal.

(IV) There shall be no order as to costs.

(DINESH MAHESHWARI),J.

MK